IN THE SUPREME COURT
OF MISSOURI

Appeal No. SC85643

JACQUELINE A. WILLIAMS,
Personal Representative of the Estate of Buddy L. Williams,
Plaintiff/Appellant,

vs.

NATIONAL CASUALTY COMPANY,
Defendant/Respondent.

An Appeal From the Associate Circuit Court of Greene County, Missouri
The Honorable Dan Conklin, Judge

BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This action is within the general jurisdiction of Article V, § 3 of the Missouri Constitution and does not involve any matter or issue within the exclusive jurisdiction of the Missouri Supreme Court. At issue in this appeal is whether § 375.995 R.S.Mo. renders the "Exception Endorsements" in Respondent's insurance policy void and unenforceable. After opinion by the Missouri Court of Appeals, Southern District, this Court ordered transfer by its order dated November 25, 2003.

STATEMENT OF FACTS

National Casualty Company ("Respondent") sold Buddy L. Williams and his spouse, Jacqueline A. Williams ("Appellant"), a health insurance policy with an effective coverage date of August 1, 1994. (LF 25, 28) Respondent's policy contains the following pertinent provisions and exclusions:

Unless stated otherwise:

a. Benefits under this section will be subject to the policy's lifetime Maximum Benefit Limit.[1]

. . .

EXCEPTION ENDORSEMENTS

NO BENEFITS WILL BE PAID UNDER THIS CERTIFICATE OF INSURANCE, OR UNDER ANY RIDER OR AMENDMENT THERETO, FOR DISABILITY, LOSS OR EXPENSE RESULTING FROM OR CAUSED BY ANY DISEASE OR CONDITION OF THE PENIS SUFFERED BY BUD L. WILLIAMS.

NO BENEFITS WILL BE PAID UNDER THIS CERTIFICATE OF INSURANCE, OR UNDER ANY RIDER OR AMENDMENT THERETO, FOR DISABILITY, LOSS

[1] Under Respondent's policy, the maximum benefit limit per person is $2,000,000.

OR EXPENSE RESULTING FROM OR CAUSED BY ANY DISEASE OR DISORDER OF THE PROSTATE, SEMINAL VESICLES, URINARY BLADDER OR URETHRA, INCLUDING ANY TREATMENT OR OPERATION FOR OR COMPLICATIONS THEREOF SUFFERED BY BUD L. WILLIAMS.

* * *

Section XV – Pre-existing Condition Limitations

We will pay the benefits of the policy for *Allowed Charges* that are due to a *pre-existing condition,* subject to the rules set forth below:

…

2. Coverage of the *pre-existing condition* must not be excluded or limited by name or specific description.

. . .

No claim for *Allowed Charges* incurred more than 24 months after a person became a *covered person* will be reduced or denied solely on the grounds that the expense is due to a *pre-existing condition,* unless the condition was excluded or limited by name or specific description prior to the date the charge is incurred.

. . .

> As used in this section, "pre-existing condition" means a condition to which either "1" or "2" below applies.
>
> 1. A condition for which a *covered person* received medical advice or treatment within 24 months immediately preceding the date he or she became insured under the policy.
>
> 2. A condition which, in the opinion of a qualified doctor: (a) began prior to the date of the *covered person's* coverage under the policy; and (b) produced symptoms that would cause an ordinarily prudent person to seek diagnosis or treatment within the 12 months immediately preceding the date he or she became insured under the policy.
>
> (LF 65)

Buddy Williams was diagnosed with prostate cancer in December, 1998, 53 months after the effective date of coverage. (LF 5). He later received medical care and treatment for his prostate cancer and related problems, incurring medical expenses. (LF 25). Buddy Williams submitted the medical expenses for his prostate cancer to Respondent, but Respondent denied the claims and refused to pay any of the expenses based solely upon the above Exception Endorsements. (LF 1, 6).

Because the Respondent denied payment of his medical expenses, Buddy Williams filed suit on May 9, 2001. Buddy Williams died on January 30, 2002. Due to Buddy's death, his wife Jackie, as the Personal Representative of his estate, was substituted as plaintiff. (LF 2, 25).

Appellant and Respondent filed a joint stipulation of facts and submitted the case to the trial court on their respective briefs. (LF 2, 25). Among other matters, the parties stipulated:

> 1. That the only issue for decision was whether § 375.995 R.S.Mo rendered Respondent's Exception Endorsements invalid, unenforceable and void;
>
> 2. That there are no other provisions, conditions or exclusions in Respondent's policy that are applicable that would have the effect of precluding coverage for the medical expenses incurred by Buddy Williams in connection with his treatment of prostate cancer; and
>
> 3. That if the Exception Endorsements in Respondent's policy are invalid and unenforceable, Judgment should be entered in favor of Appellant and against Respondent in the amount of $59,807.17, the amount of medical bills Respondent would be legally obligated to pay after it has been given credit for the applicable co-payments and deductibles.

(LF 25, 26, 27).

On January 14, 2003, the trial court entered judgment in favor of Respondent. (LF 134-135). The trial court entered four conclusions of law:

> 1. The exception endorsement as contained in [Respondent's] policy of insurance was not in violation of the provisions of § 375.995 R.S.Mo.
>
> 2. [Appellant] failed to sustain her burden of proving that the exception endorsement in defendant's policy was included for the sole reason of sexual or gender discrimination.
>
> 3. [Appellant] failed to sustain her burden of proving that [Respondent] engaged in any discriminatory action in violation of the provisions of § 375.995 R.S.Mo.
>
> 4. No evidence was adduced that the exclusion endorsement was included in [Respondent's] policy for reasons or purposes unrelated to Buddy Williams' disclosed known medical conditions.

(LF 134-135).

Appellant's Notice of Appeal was timely filed on February 21, 2003. (LF 129).

The Missouri Court of Appeals, Southern Division, filed its opinion on September 19, 2003, affirming the trial court's judgment of January 14, 2003, in favor of respondent. This Court ordered transfer on November 25, 2003.

POINT RELIED ON

POINT I

The trial court erred in entering judgment in favor of Respondent because the "Exception Endorsements" in Respondent's insurance policy is void and unenforceable pursuant to § 375.995 R.S.Mo. in that Respondent's denial of medical benefits for Buddy Williams' prostate cancer and related conditions was discriminatory as it restricted, reduced, modified and excluded benefits due to the genital organs of only one sex.

- Section 375.995 R.S.Mo. (There are no cases construing or interpreting § 375.995 R.S.Mo.)
- Harrison v. King, 7 S.W.3d 558 (Mo. App. 1999)
- Clare v. Director of Revenue, State of Missouri, 64 S.W.3d 877 (Mo. App. 2002)
- Turi v. Keet, 626 S.W.2d 422 (Mo. App. 1981)

ARGUMENT

POINT I

The trial court erred in entering judgment in favor of Respondent because the "Exception Endorsements" in Respondent's insurance policy is void and unenforceable pursuant to § 375.995 R.S.Mo. in that Respondent's denial of medical benefits for Buddy Williams' prostate cancer and related conditions was discriminatory as it restricted, reduced, modified and excluded benefits due to the genital organs of only one sex.

A. Standard of Review

This Court should reverse the trial court if the trial court's judgment was not supported by substantial evidence, it is against the weight of evidence, or it erroneously declares or applies the law. Tower Properties Co. v. Allen, 33 S.W.3d 684, 687 (Mo. App. 2000), citing Jones v. Jones, 10 S.W.3d 528, 532 (Mo. App. 1999). See also Boyd v. Director of Revenue, State of Missouri, 71 S.W.3d 262, 264 (Mo. App. 2002). Further, the construction of a statute of this State is a question of law and, therefore, it falls within this "court's province of independent review and correction, and consequently, no deference is given the trial court's determination of the law." Harrison v. King, 7 S.W.3d 558, 561 (Mo. App. 1999). In the case at bar, the trial court's judgment in favor of Respondent must be

reversed because it erroneously declared and applied the law as it relates to § 375.995 R.S.Mo.

B. <u>Section 375.995</u>

Section 375.995 was enacted in 1986. The purpose of this statute is set forth in § 375.995.2 R.S.Mo. This section provides:

> 2. The purpose of this section is to eliminate the act of denying insurance benefits or coverage on the sole basis of sex or martial status in any terms or conditions of insurance contracts and in the underwriting criteria of insurance carriers.

In § 375.995 R.S.Mo., the legislature has defined various practices that, when done by an insurance company, are considered to be discriminatory. These practices are defined in paragraph 4 and are set forth below.

> 4. The availability of any insurance contract shall not be denied to any insured or prospective insured on the sole basis of the sex or marital status of such insured or prospective insured. Neither the amount of benefits payable under a contract, nor any term, condition, or type of coverage within a contract, shall be restricted, modified, excluded, or reduced solely on the basis of the sex or marital status of the insured or prospective insured except to the extent such restriction,

> modification, exclusion, or reduction is a result of the application of rate differentials permitted under the insurance laws of this state. Nothing in this section shall prohibit an insurer from taking the marital status of an insured or prospective insured into account for the purpose of defining persons eligible for dependents' benefits. **Specific examples of practices prohibited** by this section include, but are not limited to, the following:
>
> *** * * ***
>
> (7) Restricting, reducing, modifying, or **excluding benefits relating to coverage involving the genital organs of only one sex**;

(emphasis added).

The only issue in this appeal with whether § 375.995 R.S.Mo. renders the "Exception Endorsements" in Respondent's policy void. To date, no Missouri Court has construed § 375.995 R.S.Mo. Missouri is among the majority of states that has passed legislation designed to eliminate unfair discrimination by health insurance companies. For states with similar legislation, see: Ariz. Admin. Comp. R20-6-209 (1977); Ark. Ins. Rule & Reg. 19 (1985); Cal. Admin. Code tit. 10 §§ 2560 to 2560.6 (1973); Cal. Ins. Code § 679.71 (1975); Fla. Admin. Code § 4-125.001 (1978); Ill. Admin. Reg. tit. 50 §§ 2603.10 to 2603.60 (1976); Iowa

Admin. Code §§ 191-15.11 (1997); Kan. Admin. Regs. § 40—1-31 (1977/1986); Mich. Comp. Laws § 500.2027 (1977); Minn. Stat. § 62E.08 (1982); Mont. Ins. Dept. Reg. §§ 6.6.1202 to 6.6.1203 (1979); Mont. Code Ann. § 49-2-309 (1985); Neb. Admin. R. tit. 210 ch. 28 (1977/1994); Nev. Ins. Reg. § 686A.110 to 686A.150 (1977); N.J. Admin. Code tit. 11 §§ 1-4.2 to 1-4.3 (1975/1986); N.Y. Ins. Reg. § 52.41 (1983); N.Y. Ins. Law § 2607 (1984); N.C. Admin. Code tit. 11 ch. 4 § 0317 (1979); N.D. Admin. Code §§ 45-03-10-01 to 45-03-10-04 (1988); Okla. Ins. Regs. § 365:10-1-9 (1993); Or. Admin. R. §§ 836-80-050 to 836-80-060 (1975); 31 PA. Admin. Code §§ 145.1—145.5 (1977); S.D. Codified Laws Ann. §§ 58-33-13.1 to 58-33-13.2 (1980); Tenn. Ins. Rules ch. 0780-1-34 (1976); Tex. Admin. Code §§ 21.401 to 21.409 (1978/1985); Utah Ins. R590-83 (1980/1989); VT. Admin. Comp. Ins. Dept. R. I-89-1 (1989); Wash. Rev. Code § 48.30.300 (1975-1976); Wis. Admin. Code § Ins. 6.55 (1976). See, Appendix A66 - A192). In the statutes and regulations cited above, Appellant's research has not revealed any case that has addressed statutory language similar to the language that is at issue in this appeal.

The primary goal of statutory interpretation is to "ascertain the intent of the General Assembly from the language used in the statute and, whenever possible, give effect to that intent." Harrison v. King, 7 S.W.3d at 561 (citations omitted). If a statute is expressed in plain and unambiguous terms, there is no room for

construction. Chrisman v. Terminal R. Ass'n of St. Louis, 157 S.W.2d 230, 234 (Mo. App. 1942); see also Reay v. Elmira Coal Co., 34 S.W.2d 1015, 1017 (Mo. App. 1930). When the legislative intent is clear, the court must give the statute the effect of the intent "without regard to the results of the construction or the wisdom of the law as thus construed, and [a court has] no right, by construction, to substitute any ideas concerning legislative intent contrary to those unmistakably expressed in the legislative words." Gendron v. Dwight Chapin & Co., 37 S.W.2d 486, 488 (Mo. App. 1931) (citations omitted); see also Baxley v. Jarred, 91 S.W.3d 192, 196 (Mo. App. 2002). Because § 375.995 R.S.Mo. is expressed in clear and unambiguous terms, there is no room for construction. "Where an insurer seeks to escape coverage because of a policy exclusion, the burden is on the insurer to prove facts which would make the exclusion applicable." Drury v. Blue Cross/Blue Shield of Missouri, 943 S.W.2d 834, 836 (Mo. App. 1997).

Respondent's "Exception Endorsements" unlawfully excluded coverage to Buddy Williams for his prostate cancer based upon the language in the endorsement that provided that there is no coverage for "any disease or condition of the penis" and "disease or condition or the prostate, seminal vesicles, urinary bladder or urethra" of Buddy Williams. This denial of benefits was based upon the gender of Buddy Williams and was clearly in violation of the express language set forth in § 375.995.4(7) R.S.Mo., the section of the statute that defines

discriminatory practices. Section § 375.995.4(7) R.S.Mo. specifically defines "[r]estricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex" as discriminatory. In other words, the statute provides a listing of specific practices that clearly violate the general prohibition against discrimination in the statute. As to those specific practices, the legislature has decided that they violate the statute. Other provisions may violate the statute, but would have to be evaluated in comparison to the general language of the statutes. Not so with exclusions which violate specific practices in the statutes, as does this one. In the case at bar, it cannot be disputed that Respondent denied benefits because of a condition involving Buddy Williams' prostate—part of the genital organs "of only one sex." The penis, prostate and seminal vesicles comprise the genital organs of a male and not a female (*See* TORTORA & GRABOWSKI, "Principles of Anatomy and Physiology," 933-936 (7th Ed. 1993). Section 375.995.4 defines what practices are considered to be discriminatory and Respondent's conduct in denying benefits for Buddy Williams' prostate cancer falls squarely within the practices prohibited by § 375.995.4(7) R.S.Mo. Where a phrase or term is specifically defined by statute, the definition is binding on the court and must be given effect. Clare v. Director of Revenue, State of Missouri, 64 S.W.3d 877, 879 (Mo. App. 2002). In this appeal, the practices defined in

§ 375.995.4(7) R.S.Mo. are binding on this Court and must be given effect. The decision of the trial court must be reversed.

Valid statutory provisions enter into and form a part of all contracts of insurance to which they are pertinent and applicable as fully as if such provisions were written into them. Ward v. Allstate Ins. Co., 514 S.W.2d 576, 578 (Mo. banc. 1974). See also National Indemnity Co. v. Harper, 295 F.Supp. 749, 755 (W.D. Mo. 1969) (the statute "must be held to be a part of the contract of insurance, and the insurer is bound thereby." Quoting Lux v. Milwaukee Mechanics' Ins. Co., 295 S.W. 847, 850 (Mo. App. 1927). Section 375.995 R.S.Mo. was enacted in 1986 and was part of Respondent's insurance policy when it became effective on August 1, 1994.

In light of § 375.995 R.S.Mo., Respondent certainly had no obligation to issue the policy to Appellant. It was simply a business decision made by Respondent. Alternatively, Respondent simply could have rewritten its "Exception Endorsements" so as not to violate § 375.995 R.S.Mo. Knowing that § 375.995 R.S.Mo. was part of its policy and its policy contained a discriminatory practice that was expressly prohibited by law, Respondent nevertheless proceeded to issue the policy to Appellant and collected a premium from him. Section 375.995 R.S.Mo. renders Respondent's "Exception Endorsements" void and the trial court's judgment in favor of Respondent must be reversed.

Had the "Exception Endorsements" not been in Respondent's policy, the pre-existing condition provisions in Respondent's policy would not have been applicable and Respondent's policy would have afforded coverage for Buddy Williams' prostate cancer. Respondent's policy provides the following provision:

> No claim for *Allowed Charges* incurred more than 24 months after a person became a *covered person* will be reduced or denied solely on the grounds that the expense is due to a *pre-existing condition*, **unless the condition was excluded or limited by name or specific description prior to the date the charge is incurred**.

(Emphasis added)

Buddy Williams was diagnosed with prostate cancer in December of 1998, 53 months after he became a *covered person*. Respondent's "Exception Endorsement" cannot be read together with its pre-existing condition exclusions to legitimize the denial of benefits to Appellant. First of all, the parties stipulated that, other than the "Exception Endorsements," there are no other provisions, conditions or exclusions in the policy that are applicable that would have the effect of precluding coverage for the medical expenses incurred by Buddy Williams. See, Stipulation of Facts. (LF 26). Respondent previously stipulated that the pre-existing condition exclusion was not applicable and respondent is bound by its prior stipulation. State ex rel. Turi v. Keet, 626 S.W.2d 422, 425 (Mo. App. 1981).

Even if the "Exception Endorsements" are read with the pre-existing conditions exclusion, respondent's policy still affords coverage for Buddy Williams' prostate cancer because there is no provision in § 375.995 R.S.Mo. that authorizes an insurance company to discriminate based on sex where the condition at issue resulted from some form of pre-existing condition. Had this been the intention of the Missouri Legislature, it could have easily indicated such by including the appropriate language in the statute. The intent of the legislature is set forth in the express terms of the statute and must be followed by this Court. Harrison v. King, 7 S.W.3d at 561. The legislative intent of § 375.995 was to avoid discrimination based on sex and to prevent the type of discrimination suffered by Buddy Williams.

CONCLUSION

The majority of states have enacted legislation to prohibit health insurance companies from denying insurance benefits on the basis of sex. Missouri is among the majority and its statute, enacted in 1986, is set forth in § 375.995 R.S.Mo. Section 375.995.4 R.S.Mo. has defined various practices that the legislature considers to be discriminatory and these defined practices must be given effect and followed by this Court. Clare v. Director of Revenue, State of Missouri, 64 S.W.3d at 879. Included within the list of prohibited practices is § 375.995.4(7) R.S.Mo. that provides that an insurance company cannot engage in ". . . excluding benefits relating to coverage involving the genital organs of only one sex."

Respondent improperly denied benefits to Appellant based upon its "Exception Endorsements" due to the fact that Buddy Williams had prostate cancer. Respondent's "Exception Endorsements" should be construed strictly against the Respondent. Columbia Mut. Ins. Co. v. Neal, 992 S.W.2d 204, 207 (Mo. App. 1999). Respondent's "Exception Endorsements" does exactly what § 375.995 R.S.Mo. prohibits by unequivocally denying benefits involving Buddy William's prostate—part of the genital organs "of only one sex," in violation of § 375.995.4(7) R.S.Mo.

Section 375.995 R.S.Mo. was part of Respondent's policy at the time it was issued and Respondent is bound by it. Ward v. Allstate Ins. Co., 514 S.W.2d 576,

578 (Mo. banc 1974). Respondent charged and collected a premium on its policy when it knew it contained discriminatory practices that were expressly prohibited by law. Section 375.995 R.S.Mo. does not make an exception for any type of pre-existing condition and there are no other exceptions in the statute that allow Respondent to escape the legal obligation it owes to Appellant because of the medical bills Buddy Williams incurred for the treatment of his prostate cancer.

The legislative intent concerning § 375.995 R.S.Mo. is clear and, therefore, the statute must be enforced as written and given its intended effect. Gendron v. Dwight Chapin & Co., 37 S.W.2d 486, 488 (Mo. App. 1931); see also Baxley v. Jarred, 91 S.W.3d 192, 196 (Mo. App. 2002). This Court must reverse the trial court's judgment in favor of Respondent and remand this case back to the trial court with instructions to enter judgment in favor of Appellant for $59,807.17, plus costs.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand-delivered to:

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this 5th day of January, 2004.

_____

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(b)

Come now Joseph P. Winget and Michael J. Patton and hereby certify, pursuant to Rule 84.06(b) as follows:

1. That this brief includes the information required by Rule 55.03.

2. That this brief complies with the limitations contained in Rule 84.06(b).

3. That there are 3,931 words contained in this brief.

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